

10 *PITFALLS* IN DETERMINING 7A ELIGIBILITY

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Presented by:
Ethan W. Smith, Esq.

10 *PITFALLS* IN DETERMINING 7A ELIGIBILITY

SBA West Virginia District Office

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Acknowledgment

We would like to thank Ethan Smith for his time on this webinar and offering information regarding his experience in lending and working on SBA loans from his perspective.





Instructor

Ethan W. Smith

Partner, Starfield & Smith, PC

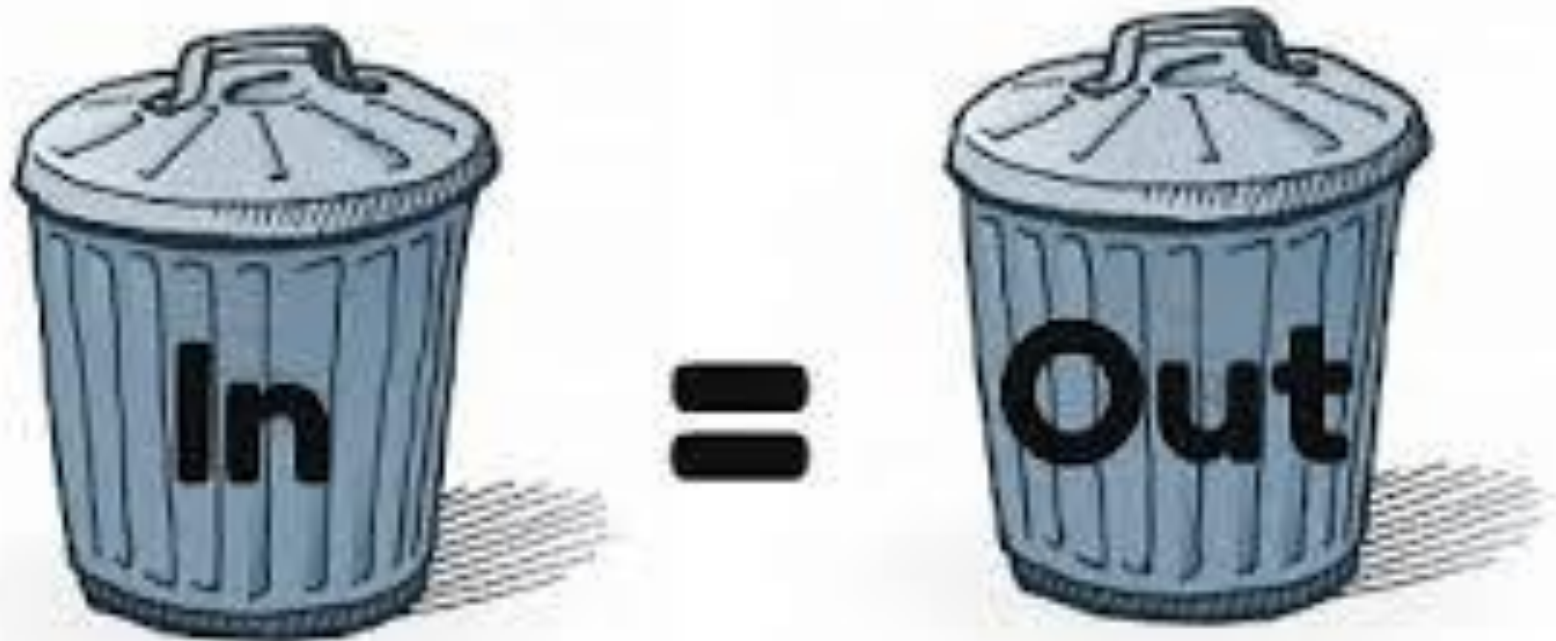
Ethan W. Smith's areas of practice focus on government guaranteed lending, commercial lending, banking, real estate and commercial law. Ethan has closed thousands of government guaranteed loans nationwide.

Starfield & Smith, P.C. is a boutique law firm specializing in all aspects of SBA-guaranteed lending, from origination through liquidation, for lenders nationwide. Starfield & Smith closes between \$130 and \$150 million of SBA guaranteed loans for its lender clients every quarter. For more information about Starfield & Smith, visit www.starfieldsmith.com.

Agenda:

1. EPC Rule
2. Change of Ownership
3. Incomplete Change of Ownership
4. Size
5. Franchise
6. Credit elsewhere
7. 912 issues
8. Prior Loss
9. Aliens
10. Personal Guarantees

Guiding Principle



1. EPC Rule

❑ EPC conditions – interpreted strictly

- Lease
- Rent
- Assignment
- Subordination
- Occupancy

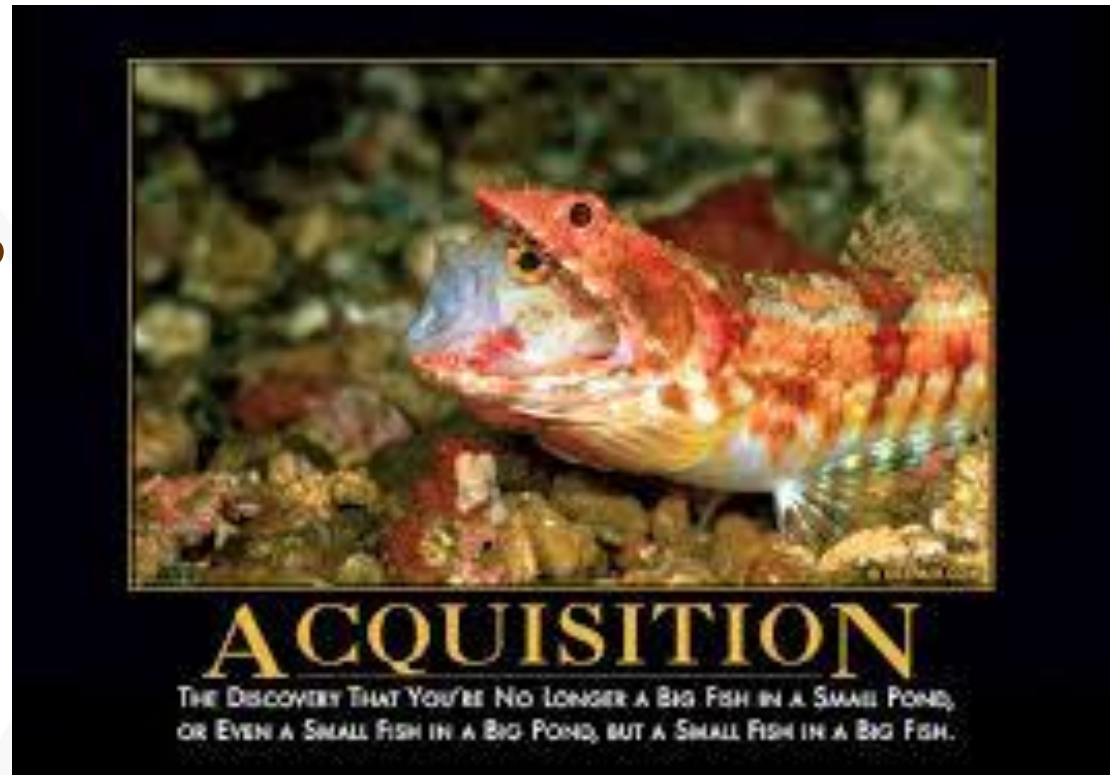
❑ One EPC only

❑ How do you determine if you have an EPC?



2. Change of Ownership

- ❑ CRE Purchase?
- ❑ Asset Purchase?
- ❑ Special use properties
- ❑ How do you tell?



3. “Complete COO”

- ❑ Seller on both sides of the transaction
- ❑ Impermissible payment to an associate?
- ❑ Not a complete change of ownership (Asset purchase structure does not cure)



4. Size

- ❑ IT MATTERS!
- ❑ Affiliation
- ❑ Inadequate or incorrect affiliation determination can blow the size standard
- ❑ Possible revisions to affiliation standards?



5. Franchises

❑ Registry process and pitfalls

- Certification
- Same Agreement?
- Addenda?
- Other documents?

❑ Non-registry

- Affiliation determination
- Risk of DIY eligibility determinations



6. Credit Elsewhere

- ❑ What it means today
- ❑ Elimination of personal resources test
 - Lenders had better justify SBA guaranty when it has high net-worth guarantors!



7. 912 Issues

- ❑ Criminal background checks?
- ❑ PLP clearance?

Authorities pursue man running with scissors

Early Sunday morning the Worth County Sheriff's Office conducted a search for a man running with scissors.

The Sheriff's Office received a 911 call at 6:20 a.m. on Sunday, July 18, advising of a domestic situation in rural Kensett. A Worth County deputy arrived



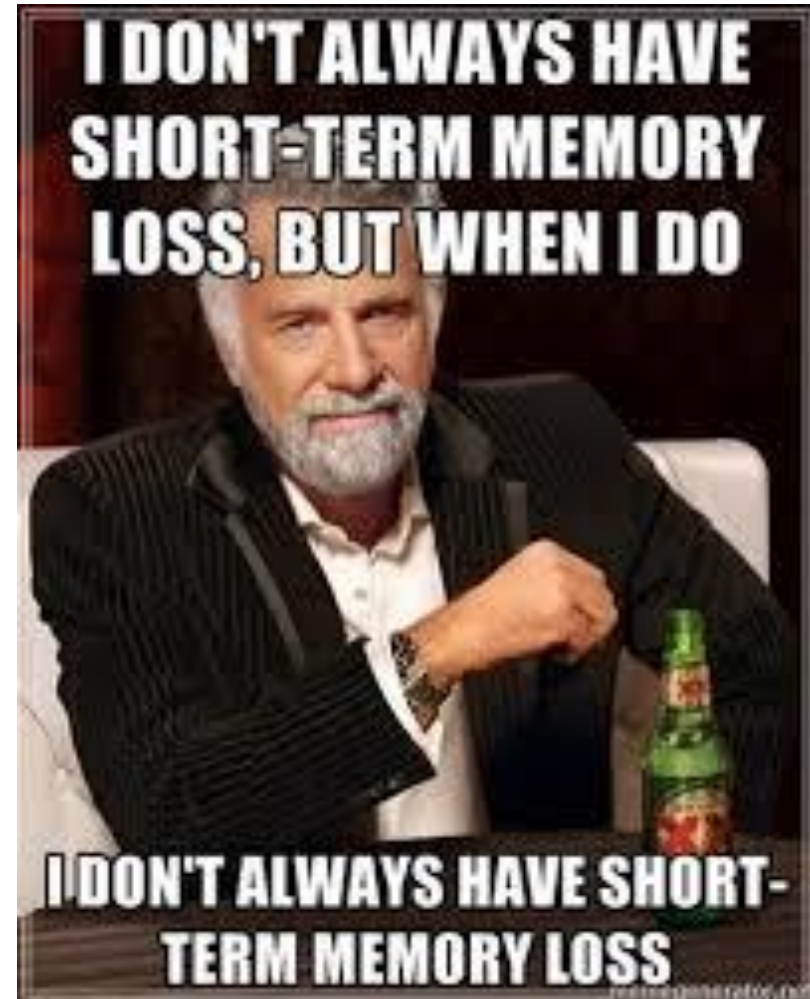
Abuse, third offense, a class D felony, and Interference with Official Acts, a simple misdemeanor.

The Worth County Sheriff's Office noted that all suspects are presumed innocent until proven guilty in a court of law.

Assisting at the...

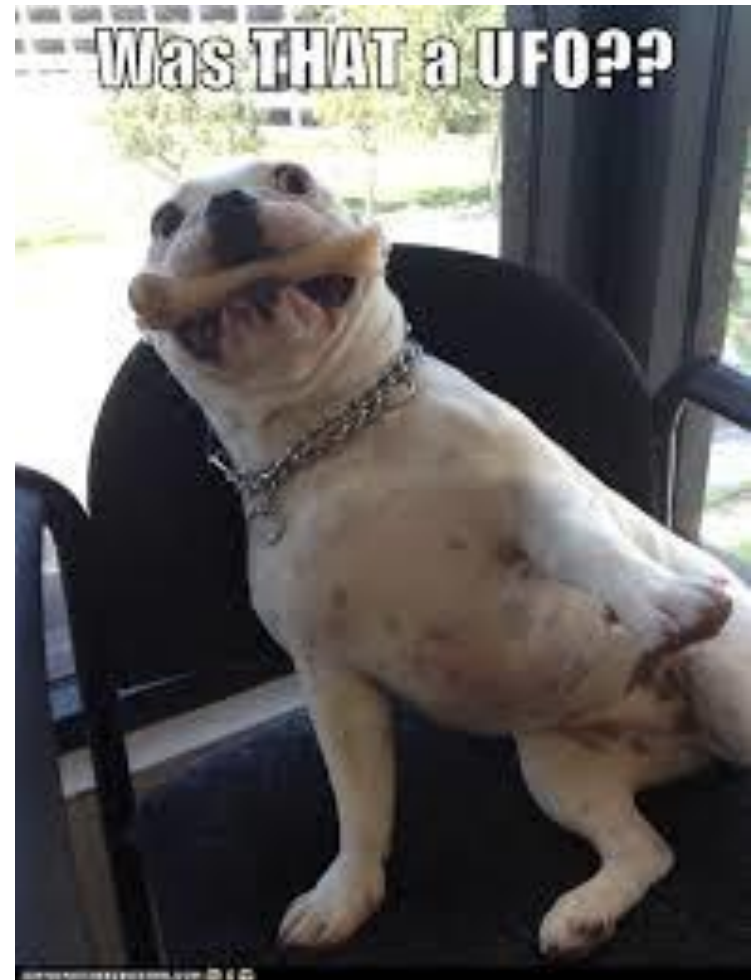
8. Prior Loss

- ❑ CAIVRS – student loan debt, other federally guaranteed financing
- ❑ Credit reporting – mandatory for all federally guaranteed loans



9. Aliens

- ❑ Businesses owned by aliens
 - LPR vs. conditional LPR
 - Non-citizens



10. Personal Guarantees

- ❑ Who must guarantee?
- ❑ How do you prove it?
- ❑ Reducing ownership
 - 6 month look back
 - Complete divestiture



Questions



Thanks!

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